F. W. Woolworth Co. *and* United Food and Commercial Workers International Union, AFL–CIO, Local 568. Case 24–CA–4514

November 29, 1991

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On June 10, 1991, Administrative Law Judge Frank H. Itkin issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, F. W. Woolworth Co., Bayamon, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent contends for the first time in its exceptions that the merger of UFCW sister Locals 568 and 481 was inconsistent with minimum due process requirements under *NLRB v. Financial Institution Employees*, 475 U.S. 192 (1986), because ''voters were mislead [sic] as to the By Laws which were to survive the merger, as they were not the current ones for Local 481 as reflected in Respondent's Exhibit 2; new ones not discussed were to be imposed.'' In this connection, the record is unclear as to which bylaws were approved by members at the May 31, 1987 merger election. Benigno Mouliert, the UFCW's International representative, testified that the members approved G.C. Exh. 34, a set of bylaws virtually identical to those of Local 568. Ebenezer Lopez-Ruyal, president of Local 481 both before and after the merger, testified that it was Local 481's constitution (G.C. Exh. 33 and R. Exh. 2) that members approved as the bylaws to govern after the merger.

We find it unnecessary to resolve this conflict in testimony. Regardless of which bylaws were approved at the merger election and subsequently implemented, the ''remaining aspects of the merger notification, meeting and voting process described in the [judge's decision were] well within the requirements of the Board and courts. *Santa Barbara Humane Society*, 302 NLRB 833 (1991).

Virginia Milan-Giol, Esq., for the General Counsel.
Luis Ortiz-Abreu and *Christopher Hoey, Esqs.*, for the Employer.
Luisa Acevedo, for the Union.

SUPPLEMENTAL DECISION

FRANK H. ITKIN Administrative Law Judge. On March 29, 1990, the Regional Director for Region 24 issued a compliance specification and notice of hearing in the above case. The Regional Director recited in the compliance specification the prior Board and Court Orders entered in this proceeding, directing Respondent F. W. Woolworth Co. (the Employer) to, inter alia, recognize and bargain with United Food & Commercial Workers International Union, AFL–CIO, Local 568 (Local 568), as the exclusive bargaining agent of an appropriate unit of its employees. The Regional Director further alleged that Federacion Americana de Empleados Publicos de Puerto Rico (American Federation of Public Employees of Puerto Rico), Local 481, United Food & Commercial Workers International Union, AFL–CIO (Local 481) is a labor organization; on May 31, 1987, the members of Local 481 and the members of Local 568 voted at a general assembly meeting to merge Local 481 with Local 568; the merger procedures provided sufficient guarantees of free choice and due process to the members of Locals 481 and 568; Locals 481 and 568 were merged effective July 1, 1987; the merger was accomplished in a manner which maintained the identity and continuity of the collective-bargaining representative and its relationship to the Employer's unit employees; and Local 481 thereby became the lawful successor to Local 568 and the exclusive collective-bargaining representative of the unit employees. The Regional Director further alleged that Local 481 has since requested the Employer to recognize and bargain with it as the exclusive representative of the unit employees and the Employer has refused. The Regional Director therefore requested a determination and order that the Employer is obligated to recognize and bargain with Local 481 in compliance with the earlier Board and Court Orders.

Respondent Employer, in its answer to the compliance specification, substantially denied the above allegations. The Employer specifically averred:

> Respondent . . . at no time refused to bargain with any Union on or about March 16, 1990, rather it correctly pointed out the express terms of the Court's decision obligated the Board and not Respondent to determine if there is a successor Union to the rights conferred upon . . . Local 568. . . . Respondent has followed the mandates of both the Board's Order dated July 11, 1988 and the Circuit Court's Decision wherein both stated the issue of successorship is one for the Board to decide at the compliance stage of this proceeding through a hearing if necessary.

Hearings were thereafter scheduled and held on the issues thus raised in Hato Rey, Puerto Rico, on October 15, 16, and 17, 1990. On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the helpful briefs filed by counsel, I make the following

FINDINGS OF FACT

A. *The Prior Proceedinqs*

The prior proceedings were summarized by the United States Court of Appeals for the Fourth Circuit in its unpublished decision issued in this case on December 27, 1989. (See G.C. Exh. l(f), App. B.) On April 21, 1980, the Retail Clerks International Union, Local 552 (affiliated with the United Food and Commercial Workers International Union, AFL–CIO) (Local 552) filed a representation petition with the Board seeking to represent an appropriate unit of the Employer's store employees in Bayamon. The Union won

the Board-conducted election and the Employer filed timely objections. The Regional Director thereafter overruled the objections and the Board denied the Employer's request for review. The Board similarly denied the Employer's request for reconsideration. The Board certified Local 552 on April 15, 1981.

On May 19, 1981, Local 568 filed a charge against the Employer, and an unfair labor practice complaint issued. The complaint alleged that Local 568 was the successor to Local 552 as a result of a merger and the Employer unlawfully refused to recognize and bargain with Local 568. The Board, on February 10, 1984, reversing the administrative law judge, dismissed the complaint. (See G.C. Exh. l(b).) The Board held that the merger was invalid and consequently the Employer had not violated Section 8(a)(5) and (1) of the Act as alleged. Local 568 sought review in the United States Court of Appeals for the District of Columbia Circuit. However, pending review, the United States Supreme Court issued a decision in *NLRB v. Financial Institution Employees*, 475 U.S. 192 (1986), affecting the applicable law in this case. The court of appeals remanded this case to the Board for further consideration. On September 17, 1987, the Board, in agreement with the administrative law judge, found that the Employer had violated the Act as alleged and ordered bargaining with Local 568. (See 285 NLRB 854 (1987), G.C. Exhs. l(d) and (e).)

On October 29, 1987, Local 481 requested recognition from and bargaining with the Employer for the unit employees as a successor to Local 568. The Employer moved to reopen this case and filed a motion for reconsideration of the Board's September 17, 1987 Order. The Board denied the motion on July 11, 1988. (See G.C. Exh. l(f), App. A.) The Board explained that ''the issue of a merger between Local 568 and Local 481 relates only to the remedial aspects of the Board's Order and is a matter for the compliance stage of this proceeding which provides an appropriate forum for the determination (through a hearing if necessary) of whether there is a lawful successor to Local 568.'' The Employer then sought review of the Board's Orders of September 17, 1987, and July 11, 1988, in the United States Court of Appeals for the Fourth Circuit. The court of appeals, on December 27, 1989, enforced the Board's Orders.

The court of appeals, in sustaining the Board, restated the controlling principles of labor law, as follows:

> Under the National Labor Relations Act a ''reorganized union may legitimately claim to succeed as the employees' duly selected bargaining representative, and in that case retain a legitimate interest in continuing to bargain collectively with the employer.'' *NLRB v. Financial Institution Employees*, 475 U.S. 192, 203 (1986). As long as the following two conditions are met the Board permits unions to change their affiliation or to merge without ''affect[ing] the union's status as the employees' bargaining representative, and the employer [is] obligated to continue bargaining with the reorganized union.'' First, the union members must be given adequate opportunity to vote, including notice to the union's members, opportunity to discuss the election, and assurance of a secret ballot. Second, there must be a substantial continuity between the pre-affiliation and post-affiliation union. Id. at 199–200.

The court of appeals ''agree[d] with the Board's determination that the validity of Local 481's bargaining demand is a matter for the compliance stage of this proceeding which provides an appropriate forum for the determination (through a hearing if necessary) of whether there is a lawful successor to Local 568.''

Summarized below is the evidence adduced at the compliance hearing and a discussion pertaining to the issues raised herein, namely, the labor organization status of Local 481, the free choice and due process considerations involved in the merger, the continuity of identity considerations involved in the merger, and finally a consideration of whether a sufficient demand to bargain and unlawful refusal occurred here.

B. *The Labor Organization Status of Local 481*

Respondent Employer, in its answer to the compliance specification, denied that Local 481 is a labor organization within the meaning of Section 2(5) of the Act. Section 2(5) defines a labor organization as:

> any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The essentially undisputed and credited evidence of record, summarized below,[1] amply demonstrates that Local 481 is a labor organization as alleged.

Ebenezer Lopez-Ruyol, president of Local 481 both before and after the July 1, 1987 merger in issue here, testified that Local 481 was created about 1959 as District 39 of the American Federation of State, County and Municipal Employees (AFSCME); it later disaffiliated from AFSCME and became an independent union: in 1985 it experienced a reorganization and a new board of directors was elected; and Lopez then became its president. Lopez sought a charter with the United Food & Commercial Workers International Union (UFCW). UFCW granted Local 481 a charter on August 1, 1986, to, inter alia, ''further the great objectives and principles expressed in the International constitution through organizing and representing workers within the jurisdiction assigned by the International . . . .'' (See G.C. Exh. 28.) Local 481 prepared a constitution which provides, inter alia, that its purpose is to ''assume the representation of public or private employees in everything concerning their working conditions, fringe benefits, grievances, controversies, reclamations, etc., that may arise as a consequence of their conditions of employment.'' (See G.C. Exh. 33.)[2]

Benigno Mouliert, president of Local 552 until about 1973 and later special representative and International representative for the UFCW, testified that in 1986, when Local 481

[1] I credit the testimony of Ebenezer Lopez-Ruyol and Benigno Mouliert summarized below in this and the following sections. Their testimony is essentially uncontroverted; it is substantiated by uncontroverted documentary evidence; it is in part mutually corroborative; and, in addition, they impressed me as trustworthy and reliable witnesses.

[2] Local 481's constitution also provides, inter alia, for officers and a board of directors; the election of such officers and their duties; the collection of dues; and the holding of meetings.

received its UFCW charter, it mainly represented some 1300 to 1400 public employees including municipal employees, school lunch program employees, department of correction employees, department of transportation and public works employees' and general service administration employees. Local 481 represented the employees by, inter alia, processing their grievances, enforcing transfer and promotion rights, compelling the timely granting of salary increases, providing legal and medical aid services to members, and prosecuting employee discrimination suits.

Lopez testified that Local 481, after the 1987 merger, continued to represent public employees. In addition, as Lopez further explained, about late 1986 Local 481 was also attempting to organize in the private sector. Local 481 participated in a representation election at the Puerto Rico Dairy, a food processing facility, during late 1986. On March 5, 1987, Local 481 was certified by the Board's Regional Director to represent employees of Aspira, Inc. De Puerto Rico, a private nonprofit corporation. (See G.C. Exh. 31.) Lopez noted that there were two elections for two units of Aspira. And, Mouliert testified that Local 481 also negotiated a collective-bargaining agreement with Aspira effective from August 1, 1987, to July 1, 1990.

The essentially undisputed and credited evidence of record shows and I find and conclude that Local 481 is and has been at all times material to this proceeding a labor organization within the meaning of Section 2(5) of the Act. Local 481 is clearly an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

C. *The Free Choice and Due Process Considerations Involved in Determining the Validity of the Merger*

The United States Supreme Court, in restating this required element to find a valid successor union, noted in *NLRB v. Financial Institution Employees*, supra,

> In some cases the affiliated union will not petition the Board to amend its certification but will instead wait to see whether the employer will continue to bargain. If the employer refuses to bargain the union may then file an unfair labor practice charge with the Board. In the past the Board required the employer to bargain if the affiliation satisfied its two pronged due process and continuity test . . . .
>
> . . . .
>
> First, that union members have had an adequate opportunity to vote on the affiliation. *North Electric Co.*, 165 NLRB 942, 943 (1967). The Board ordinarily required that the affiliation election be conducted with adequate ''due process'' safeguards, including notice of the election to all members, an adequate opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy. E.g. *Newspapers, Inc.*, 210 NLRB 8, 9 (1974), enfd. 515 F.2d 334 (5th Cir. 1975).

Counsel for General Counsel argues in her posthearing brief (pp. 6–8, 13–15) that the ''merger election held on May 31, 1987 provided guarantees of choice and due process to members of Locals 481 and 568.'' Counsel for Respondent Employer, citing and principally relying on the dissenting opinion of former Board Member Walther in *Bear Archery*, 223 NLRB 1169 (1976), enf. denied 587 F.2d 812 (6th Cir. 1977), asserts (pp. 4–9) that the ''election . . . for the merger'' ''did not conform fully with the complete due process requirements as expressed above'' and ''did not meet important due process safeguards.'' The essentially undisputed and credited evidence of record, summarized below, amply demonstrates here that, on balance, the merger election satisfied the requisite ''adequate due process safeguards.''

Thus, Local 481 President Lopez testified that the merger process between sister Locals 481 and 568 started approximately 10 months prior to the actual merger on July 1, 1987. Lopez recalled that during 1986, when Local 481 was first attempting to represent both private and public sector employees, the two Locals commenced discussions about ''the possibility of becoming only one Local'' ''as long as we were organizing in both the private and public sectors.'' And, on February 23, 1987, Lopez wrote International President William Wynn of the UFCW, explaining that Local 481 represents ''mostly public employees,'' Local 568 represents ''the private industry'' and ''it would be [of] great benefit to our membership and it would be economical to our Locals if we merge.'' Accordingly, Lopez ''officially'' requested ''permission to start merger conversations.'' (See G.C. Exh. 6.) Local 568 President Carmelo Cruz sent Wynn a similar letter on February 25, 1987, noting: ''We feel that there is a potential growth in membership here on the island and in our opinion the best way to achieve this goal . . . would be by joining forces with our sister Local 481.'' (See G.C. Exhs. 7 and 8.)

On April 14, 1987, International President Wynn and International Secretary-Treasurer Jerry Menapace notified Local 481 President Lopez and Local 568 President Cruz in separate letters that permission was granted ''to enter into merger discussions.'' The International representatives also enclosed copies of the UFCW ''Merger Procedure'' and ''Resolution And Conditions Of Merger.'' (See G.C. Exhs. 9 and 10.) The ''Merger Procedure'' listed 16 steps summarized below ''to be followed by UFCW chartered bodies contemplating merger'':

> 1. Informal exploratory discussions between the ''potential merging bodies.''
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> 2. Chief executive officers of such chartered bodies request approval from the International executive committee for formal merger discussions.
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> 3. The International president also seeks a recommendation from regional directors.
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> 4. The directors make such a recommendation.
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> 5. The International president may assign regional directors to assist the two chartered bodies.
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> 6. The chartered bodies draft a merger resolution, a ''sample'' enclosed.
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> 7. The executive boards of both chartered bodies ''recommend [the] merger agreement to membership.''
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> 8. There must be ''formal'' notification to the membership of both chartered bodies. Members were required ''to receive formal notice of a membership meeting at which there will be a full disclosure of the terms of the merger agreement''; ''there shall be an opportunity for full discussion of the merger at this meet-

ing''; ''members shall receive formal notice of a membership meeting at which the merger resolution shall be voted upon''; ''the discussion and vote may be done at one meeting'' and the notice shall so reflect; and ''formal notice'' is ''usually written notice mailed to each member not less than 15 days prior to the meeting.''

9. The two bodies' memberships must ''vote by secret ballot to approve [the] merger agreement.''

10. The two bodies must submit the ''Resolution And Conditions Of Merger'' to the regional directors.

11. The directors make recommendations to the International executive committee.

12. The International executive committee approves the proposed merger.

13. The International notifies the two bodies of the executive committee decision and ''provide[s] detailed instructions regarding consummation of the merger.''

14. ''All records, collective bargaining agreements, assets, properties and liabilities shall be transferred to the merged body.''

15. There will be a ''surrender'' of the charter and seal to the International by the ''body going out of existence.''

16. The ''body going out of existence'' sends certain ''terminal'' reports to the International.

(See also G.C. Exh. 11.)

International Representative Mouliert testified that a memorandum and leaflet dated May 13, 1987 (G.C. Exh. 12), were sent to all delegates or shop stewards of Local 481 and Local 568. The delegates or stewards were instructed to distribute the enclosed leaflet among their members; ''an assembly is being convoked for discussing and voting over the resolution of Locals 481 and 568'' referred to in the enclosed leaflet; ''it is of the utmost importance that everyone attend''; and therefore post copies of the enclosed leaflet on employer bulletin boards ''in addition to distributing same.'' The enclosed leaflet, captioned ''Notice General Assembly,'' was addressed to ''all members'' of Local 481 and Local 568; referred to the ''subject'' of the ''Notice'' as the ''Discussion and voting on the Resolution of Locals 481 and 568 to merge and form a single local, Local 481 . . .''; specified the place and time of the ''assembly''; and recited:

> We exhort all of our comrades of Locals 481 and 568 . . . to attend this important Assembly, since during said meeting we will thoroughly explain and discuss the terms of the resolution for the merger and we will cast our votes over the same.[3]

Mouliert also testified that a copy of the above leaflet or ''Notice'' was sent by mail to ''each member of both Locals'' ''at least 15 days prior to the assembly.'' In addition, Local 481 President Lopez explained that a copy of the proposed ''Merger Agreement'' (G.C. Exh. 19) was also mailed to ''each and every employee.'' Lopez noted:

> some people . . . brought the copy [to the assembly or meeting on May 31] and asked some details about the matters.

The proposed ''Merger Agreement'' provides, inter alia, that it ''shall be submitted to a vote and shall be approved by the executive board of each Local Union and by the membership of each Local Union''; it ''shall be read and/or distributed to the membership of each Local at special or regular meetings called for the purpose of presenting the merger agreement to such membership.''

Mouliert next recalled the assembly or meeting convened on May 31, 1987. Attendance was taken. See General Counsel's Exhibits 13 and 14, listing 27 Local 481 members and 24 Local 568 members. A quorum was present as provided in the International's constitution. (See G.C. Exh. 15, p. 26.) The officers present were introduced and ''a discussion began on all the details of the merger agreement.'' The ''Merger Agreement'' was ''read'' to the membership; ''it was translated into Spanish as it was being read.'' ''All the members were allowed to ask all the questions they had relating to the agreement.'' (See G.C. Exh. 25.)

A vote was then taken. The members of each Local voted separately by secret ballot, using separate ballots and ballot boxes. The ballots made it clear that the members were voting on the proposed merger. (See G.C. Exhs. 16 and 17.) The votes were tallied, showing that all 27 of the Local 481 members present and all 24 of the Local 568 members present voted in favor of the merger. The voting results were certified by Wanda Negron and Amalis Torres as secretary-treasurer and minutes secretary for Local 481, respectively, and Luisa Acevedo and Carmen Sanders as secretary-treasurer and minutes secretary for Local 568, respectively, and notarized by Local 481 President Lopez, a notary public. (See G.C. Exh. 18.) There is nothing in this record which shows or suggests any opposition to or dissension from the proposed merger and slate of officers and directors before, during, or after this May 31 membership meeting and vote.

The required ''Resolution And Conditions of Merger'' (G.C. Exh. 24) was thereupon prepared and certified by Local 481 President Lopez and Secretary-Treasurer Acevedo, reciting compliance with the merger procedures, and noting:

> at the [May 31, 1987] membership meeting, this resolution and the exhibits attached . . . were read and the issue of the merger under the terms and conditions set forth herein was fully discussed, all members present having been given an opportunity to express themselves fully and freely on the subject of the merger, the matter was put to vote and was approved by the requisite majority vote . . . .

See also General Counsel's Exhibit 19. The UFCW was thereupon notified of the results of the vote.

On July 1, 1987, the UFCW issued Local 481 its new charter. (See G.C. Exh. 41.) The merger was announced to the press. (See G.C. Exh. 26.) International Representative Mouliert recalled that ''it was broadcast on the news.'' Employers of represented employees were notified of the merger. Employers of represented employees were similarly notified of the new Local 481 officers. (See G.C. Exhs. 20–23.) On November 24, 1987, International President Wynn sent Local 481 President Lopez a signed and approved copy of

[3] The leaflet also listed the proposed new officers and board of directors for Local 481. This proposed slate of officers and directors for the merged Local 481 consisted essentially of a consolidation or combination of incumbents of both sister Locals. See discussion, sec. D, infra.

Local 481's bylaws which became effective on July 1, 1987, as a result of the merger. (See G.C. Exh. 34.)

The essentially undisputed and credited evidence of record detailed supra makes it clear that the Local 481 and Local 568 members had an adequate opportunity to vote on the merger of the sister locals and election of new officers and directors; that the merger proceeding was conducted with adequate due process safeguards, including notice of the election to all members, an adequate opportunity for all members to discuss the merger and election, and reasonable precautions to maintain ballot secrecy; and that the careful adherence by Local 481 and Local 568 to the detailed merger procedures of the International readily satisfied this due process requirement.

Counsel for Respondent Employer, principally relying on the dissenting opinion of former Board Member Walther in *Bear Archery*, supra, asserts that ''election . . . for the merger'' ''did not conform fully with . . . complete due process requirements . . . .'' Counsel for Respondent, noting, inter alia, UFCW and Local constitution and bylaw provisions pertaining to local union elections and pertaining to the amendment of bylaws and constitutional provisions, argues that Local 481 President Lopez improperly chaired the May 31, 1987 assembly because he was also a candidate for president of the merged Local 481; the election registers were not kept by ''impartial judges'' on May 31 because the Local 481 and Local 568 secretaries were also candidates for positions with the merged Local 481; the members were not offered ''any opportunity'' ''to nominate candidates to the board of directors'' ''other than those designated'' by persons who ''were candidates''; and ''the abolition of the bylaws of Local 568 and substitution of said bylaws with the constitution of Local 481 was performed in contravention to . . . the bylaws of Local 568 pertaining to amendments to bylaws.'' Counsel for Respondent also notes the relatively light turnout of members at the merger election. (See R. Br. pp. 5–9.)

Counsel for Respondent's above-cited reasons why the merger proceeding of the sister Locals was inadequate here does not, on balance, negate the carefully documented ''adequate due process safeguards'' which were in fact provided for the membership. Again, all members were given full notice of the proposed merger including the election of a new slate of officers and directors; the members were afforded and took advantage of a full opportunity to discuss and participate in the merger and election process; a secret-ballot election was conducted; and there is nothing in this record which shows or suggests any opposition to or dissension from the proposed merger or election of new officers and directors before, during, or after this May 31 membership meeting and vote. Counsel for Respondent's reliance on *Bear Archery* is misplaced. The Board, distinguishing *Bear Archery* in *American Mailers*, 231 NLRB 1194 (1977), noted that,

> In his dissent . . . Member Walther disapproved the affiliation election of an independent union with a local of the United Auto Workers, an international union, because of the presence of a UAW representative without the presence of an impartial third party, because of lack of time for employee reflection on the issues, and because of a context ''stifling opposition'' due to lack of ''a truly secret ballot.''

The Board explained in *American Mailers*,

> In our view there is little need for an impartial third party at the vote in this sister local situation, and ''stifled opposition'' was not a hazard; the employees well knew the issues and the probable economic consequences at stake. In these circumstances, where the merger is of two sister locals . . . where no employee has any objection to the election procedures utilized, and the employees by their action since the merger have clearly supported the affiliation . . . we shall adhere to the Board's consistent policy of honoring the desires of employees pursuant to Section 7 of the Act . . . .

The United States Court of Appeals for the Sixth Circuit, although having denied enforcement in *Bear Archery*, enfd. per curiam *American Mailers*, 622 F.2d 242 (6th Cir. 1980).

I would distinguish *Bear Archery* here for similar reasons. In any event, I am of course bound by the decision of the Board majority in *Bear Archery*. In addition, as the Board noted in *Newspapers, Inc.*, 210 NLRB 8, 9 (1974), cited by the Supreme Court in *NLRB v. Financial Institution Employees*, supra, ''strict adherence to the [Local's] constitution is not the controlling factor in such cases''; ''what is important is whether the employees (members) had proper opportunity to express their desires.'' And, more recently, in *Santa Barbara Humane Society*, 302 NLRB 833 (1991), the Board adopted the administrative law judge's determination, as follows:

> I reject respondent's arguments with respect to . . . noncompliance with local and international constitutional and bylaw provisions. While such compliance is a factor to be considered in merger cases, I do not accept the premise that the constitutional and bylaw provisions governing election of union officers must apply to or control an election respecting the merger of locals.

In short, the Supreme Court, in restating the Board's practice in such merger cases, referred to the required ''adequate due process safeguards.'' Such safeguards were provided here. *NLRB v. Financial Institution Employees*, supra.

D. *The Continuity of Identity Considerations Involved in Determining the Validity of the Merger*

The Supreme Court, in restating this second required element to find a valid successor union, noted in *NLRB v. Financial Institution Employees*, supra,

> Second, that there was substantial ''continuity'' between the pre- and post-affiliated union. The focus of this inquiry was whether the affiliation had substantially changed the union; the Board considered such factors as whether the union retained local autonomy and local officers, and continued to follow established procedures. . . .
>
> As the Board has recognized, ''an affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization.'' *Amoco Production Co.*, 239 NLRB 1195 (1979). Rather, the union will determine ''whether any administrative or organizational changes are necessary in the affiliating

> organization.'' Ibid. If these changes are sufficiently dramatic to alter the union's identity, affiliation may raise a question of representation, and the Board may then conduct a representation election. Otherwise, the statute gives the Board no authority to interfere in the union's affairs.

Counsel for General Counsel argues (pp. 18–19) that ''no such dramatic alteration of identity has been shown'' here. Counsel for Respondent claims (pp. 10–13) ''that the merger . . . produced a change in the former Union that is sufficiently dramatic to alter the Union's identity.'' The essentially undisputed and credited evidence of record, summarized below, amply demonstrates here that, on balance, the merger also satisfied this ''substantial continuity'' test.

The ''Merger Agreement'' (G.C. Exh. 19) provides, inter alia, that there will be ''continued'' employment of Local 481 and Local 568 staff by the merged organization maintaining existing ''seniority rights''; debts, property and obligations ''continue'' from the two Locals to the merged Local 481; existing certifications and collective-bargaining agreements are not affected by the merger; the members of the merged sister Locals become members of the merged organization and their existing benefit programs are ''continued''; ''the initiation fee and dues section shall be modified to reflect the existing dues and dues increases as presently allowed under the existing bylaws of Local 481 and Local 568 respectively''; and ''health and welfare programs remain the same'' with present executive officers retaining their trustee positions. In addition, the International, in previously sending Local 481 President Lopez and Local 568 President Cruz copies of its detailed ''Merger Procedure'' and ''Resolution And Conditions of Merger'' on April 14, 1987 (G.C. Exh. 9), enclosed with the ''Resolution'' the required ''Letter To Employers,'' which makes clear to the employers of represented employees:

> The merger in no way affects the autonomy of the Local Union and, in any event, is purely an internal matter having no affect on the relationship between [the Local and the Employer] . . . . [The Local] will continue to administer the contract and in all respects continue as the collective bargaining representative of the employees covered by the contract.

International Representative Mouliert testified that ''there were no changes in dues because of the merger'' ''for all members''; collective-bargaining unit members previously represented by Local 568 continue to vote on ''ratification'' of the agreements ''once the bargaining sessions are finished''—the ''system is the same''; ''autonomy'' exists ''to call strikes''; ''at the present time Local 481 belongs to the same [pension] plan that 568 used to belong to''; and Local 481 ''moved into'' the offices of Local 568 ''after the merger.''

The ''Merger Agreement'' (G.C. Exh. 19) shows that Lopez from Local 481 continued on as president of the merged Local 481; Acevedo from Local 568 continued on as secretary treasurer; Sanders from Local 568 continued on as recorder; and former Local 568 President Cruz became first vice president and an executive board member of merged Local 481, together with board members and Vice Presidents Lamboy, Lloret, Gonzalez, Finance Secretary C. Lopez, Torres, Santos, Vega, Rios, and Galindez. See also General Counsel's Exhibit 12 naming the above proposed slate in the ''Notice'' to members. Mouliert testified that he too remained on as International representative for the merged organization. Mouliert observed that about half of the merged board of directors were from Local 568. Moreover, former Local 568 President Cruz became ''Director For Services [for the] Private Sector'' and Lloret from former Local 481 became ''Director For Services [for the] Public Sector'' for merged Local 481. (See G.C. Exhs. 22–23.) And, the ''Merger Agreement'' provides:

> The parties to this document should use their best effort to ensure that the executive board will continue for the term of this Merger Agreement to represent the same ratio of Local 481 and Local 563 members as existed on the effective date of the merger.

Collective-bargaining agreements in effect at the time of the merger continued after the merger. Lopez testified that ''some of'' these contracts have been ''rebargained'' and are now ''in effect.'' Local 481 continued to represent both the private sector and public sector employees. Thus, for example, General Counsel's Exhibit 20 is a letter dated July 7, 1987, to a private employer of represented employees, explaining the merger, and noting:

> The merger is a purely internal matter and will not affect in any way the autonomy of the Local Union and thus will have no effect on the relationship between Local 481, and Local 481 will continue to administer the collective bargaining agreement and will continue to be the exclusive representative of all employees covered by the contract.

Former Local 568 President Cruz, first vice president and director of services for the private sector for merged Local 481, signed this letter.

The essentially undisputed and credited evidence of record detailed supra amply demonstrates here that there was ''substantial continuity'' after the merger of sister Locals 481 and 568; the merger did not ''substantially change'' the Union; the Union ''retained Local autonomy and Local officers, and continued to follow established procedures''; and any ''changes'' resulting from the merger of the sister Locals were not ''sufficiently dramatic to alter the Union's identity.'' As counsel for General Counsel states in her posthearing brief (pp. 18–19), ''the basic identity, rights and obligations of the employees formerly represented by Local 568 have not been significantly altered by the merger''; both Local 568 and 481 were Locals of the same International [and] the former members of Local 568 continue to be governed by the International Union's constitution and bylaws''; ''the assets and liabilities of Local 568 were transferred to post merger Local 481 . . . and the representatives who dealt with the employees [and employers] . . . continue . . . just as before the merger''; ''collective bargaining agreements negotiated by Local 568 remained in effect'' and ''post merger Local 481 retained its autonomy'' and ''agreed to honor all'' premerger ''contractual commitments''; ''the officers of Local 568 formed a part of the board of directors of post merger Local 481''; ''all assets, liabilities, obligations and property'' were transferred; ''continuity in all the rights

and privileges of membership in Local 568 were preserved . . .''; and ''the merged organization was intended to and is functioning as a continuation of its constituent parts.''

Counsel for Respondent argues, inter alia, that some of the new board of directors of merged Local 481 who came from Local 568 later left Local 481 or were no longer officers; and, in addition, that premerger Local 568 was ''geared toward'' representing employees in the private sector while premerger Local 481 was ''geared toward'' representing employees in the public sector (pp. 10–13). I have considered these and related factors cited by counsel for Respondent; nevertheless, on balance, I find and conclude here a sufficient showing of the requisite ''substantial continuity.''[4]

E. *Respondent's Refusal to Bargain*

International Representative Mouliert, by letter dated January 31, 1990, requested Respondent Employer to bargain with the Union in compliance with the court of appeals' decision enforcing the Board's outstanding Order. (See G.C. Exh. 36.) Mouliert received no response to his request and renewed his request for bargaining on February 22, 1990. (See G.C. Exh. 37.) On the same day, February 22, counsel for Respondent Employer responded requesting ''the details'' of any ''merger'' and stating that ''there is no current obligation to bargain'' with any organization other than Local 568 ''which I believe is defunct.'' (See G.C. Exh. 38.) On March 13, 1990, Mouliert sent counsel for Respondent Employer ''information pertaining [to] the merger'' and again requested bargaining. (See G.C. Exh. 39.) Counsel for Respondent Employer replied by letter dated March 16, 1990, claiming that the ''enclosures'' ''unfortunately . . . are not enough . . .'' and the Union should ''establish'' its ''claim'' at a hearing. (See G.C. Exh. 40.) It is clear that by March 16, 1990, Respondent Employer had refused to bargain with Local 481 as the lawful successor of Local 568.

CONCLUSIONS OF LAW

1. Local 481 is a labor organization and is the lawful successor to Local 568, as alleged.

2. Respondent Employer violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with Local 481 as the exclusive bargaining representative of its employees in the following appropriate unit:

> All regular full time and part time selling and non selling employees employed by the Employer at its Bayamon Shopping Center Store, Bayamon, Puerto Rico, including cafeteria employees; but excluding all managerial personnel, the store manager, assistant store manager trainee, restaurant manager, personnel supervisor, professional personnel, guards and supervisors as defined in the Act.

REMEDY

Respondent Employer will be directed to cease and desist from engaging in the unfair labor practices found above and like or related conduct, and to post the attached notice in both English and Spanish. Affirmatively, Respondent Employer will be directed to recognize and on request bargain with Local 481 as the exclusive bargaining representative of its employees in the above appropriate unit and if an understanding is reached embody that understanding in a signed agreement. The initial certification year will be deemed to begin when Respondent first commences to fulfill its 10-year-old statutory bargaining obligation. See 285 NLRB at 860.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, F. W. Woolworth Co., Bayamom, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain in good faith with the Union, Federacion Americana de Empleados Publicos y Privatos de Puerto Rico (American Federation of Public and Private Employees of Puerto Rico), Local 481, United Food & Commercial Workers International Union, AFL–CIO as the exclusive bargaining agent of its employees in the following appropriate unit:

> All regular full time and part time selling and non selling employees employed by the Employer at its Bayamon Shopping Center Store, Bayamon, Puerto Rico, including cafeteria employees; but excluding all managerial personnel, the store manager, assistant store manager trainee, restaurant manager, personnel supervisor, professional personnel, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate unit of its employees with respect to their wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

(b) Post at its Bayamon, Puerto Rico store, copies of the attached notice marked ''Appendix'' in both English and Spanish.[6] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the

[4] The record shows that Local 481's name was amended in November 1989 to Federacion Americana De Empleados Publicos Y Privados. The words ''And Private'' were added to its title. See Tr. 299. There is no contention that this subsequent change in title is material here, and the pleadings will be amended to reflect this change.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Union, Federacion Americana de Empleados Publicos y Privatos de Puerto Rico (American Federation of Public and Private Employees of Puerto Rico), Local 481, United Food & Commercial Workers International Union, AFL–CIO as the exclusive bargaining agent of our employees in the following appropriate unit:

> All regular full time and part time selling and non selling employees employed by the Employer at its Bayamon Shopping Center Store, Bayamon, Puerto Rico, including cafeteria employees; but excluding all managerial personnel, the store manager, assistant store manager trainee, restaurant manager, personnel supervisor, professional personnel, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate unit of our employees with respect to their wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

F. W. WOOLWORTH CO.